

ASSEMBLY BILL

No. 2302

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Laird, Levine, Lieber, and Montanez)**

February 22, 2006

An act to amend Section 755 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, as introduced, Committee on Judiciary. Evidence: court interpreters.

Existing law requires that in any action or proceeding pursuant to specified provisions of law, an interpreter be provided by the court for a party who is incapable of understanding or speaking the English language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill would revise the above provision to specify that in any civil action or proceeding, including, but not limited to, any family court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, an interpreter be present to interpret the proceedings, as specified. The bill would also require a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter. The bill would also make related changes to that

provision of law and would set forth findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) California is emblematic of the American dream, a place of
3 stunning natural beauty, a seat of international commerce, a land
4 of unparalleled opportunity. As a result, California is the most
5 populous and demographically diverse state in the nation, a
6 meeting place of cultures, ethnicities, and ideas unlike any other
7 in the world. Of the state's 34 million people, about 26 percent
8 (roughly 8.8 million people) are foreign born. Californians speak
9 more than 220 languages, and 40 percent of the state's population
10 speaks a language other than English in the home. This
11 extraordinary diversity is among the state's greatest assets and
12 has helped make California an international leader in business,
13 the arts, entertainment, engineering, medicine, and other fields.
14 The state's diversity also poses unique challenges for the delivery
15 of government services, particularly for the courts.

16 (b) For Californians not proficient in English, the prospect of
17 navigating the legal system is daunting, especially for the
18 growing number of parties who do not have access to legal
19 services and therefore have no choice but to represent themselves
20 in court, which is a virtually impossible task for people who are
21 unable to understand the proceedings. Nearly seven million
22 Californians cannot access the courts without significant
23 language assistance, cannot understand pleadings, forms, or other
24 legal documents, cannot communicate with clerks or court staff
25 and cannot understand or participate meaningfully in court
26 proceedings much less effectively present their cases without a
27 qualified interpreter. People with limited English proficiency are
28 also often members of groups whose cultural traits or economic
29 circumstances make them more likely to be subjected to legal
30 problems, in part because perpetrators recognize their victims'
31 limited ability to access judicial protection.

32 (c) The Legislature has previously recognized that the number
33 of non-English speaking persons in California is increasing, and

1 recognized the need to provide equal justice under the law to all
2 California residents and to provide for their special needs in their
3 relations with the judicial and administrative law system. The
4 Legislature has likewise recognized that the effective
5 maintenance of a democratic society depends on the right and
6 ability of its residents to communicate with their government and
7 the right and ability of the government to communicate with
8 them.

9 (d) Inadequate resources to assist litigants with limited English
10 proficiency affects the court's ability to function properly,
11 causing delays in proceedings, inappropriate defaults, and faulty
12 interpretation that can ultimately subvert justice. Our judicial
13 system relies on the adversarial process in which neutral arbiters
14 decide disputes based upon competing presentations of facts and
15 law. Conducting court proceedings when one party is incapable
16 of fully participating significantly impairs the quality and
17 efficiency of the process and its results, including compliance
18 with court orders. The courts have made significant efforts to
19 assist litigants with limited English proficiency, including steps
20 to increase the number of certified and registered interpreters and
21 to provide interpreters in civil cases, if resources are available.
22 Nevertheless, court proceedings are required to be conducted in
23 English, and most crucial court forms and documents are
24 available only in English, while the number of skilled interpreters
25 has actually declined over the past decade and the number of
26 persons requiring interpreter services has increased. As a result, a
27 qualified interpreter is not provided in most civil proceedings.

28 (e) The inability to respond to the language needs of parties in
29 court impairs trust and confidence in the judicial system and
30 undermines efforts to secure justice for all. The authority of the
31 courts depends on public perceptions of fairness and
32 accessibility. Any significant erosion of public trust and
33 confidence in the fairness of judicial outcomes threatens the
34 future legitimacy of the legal system. By excluding a large
35 segment of the population from participation in an institution that
36 shapes and reflects our values, we threaten the integrity of the
37 judicial process. Resentment fostered by the inability to access
38 the benefits of the court system can ultimately impair
39 enforcement of judicial decrees and attenuate the rule of law.

(f) Reliance on untrained interpreters, such as family members or children, can lead to faulty translations and threaten the court's ability to ensure justice. Court interpretation is extremely difficult and takes a rare combination of skills, experience, and training. Apart from the possibility of fraud, unqualified interpreters often fail to accurately and comprehensively convey questions and distort testimony by omitting or adding information, or by stylistically altering the tone and intent of the speaker, thereby preventing courts from hearing the testimony properly. These problems compromise the fact-finding process and can result in genuine injustice.

(g) An overwhelming number of Californians believe that interpreters should be made available to assist non-English speakers in all court proceedings, and that interpreters should be provided free of charge to low income non-English speakers.

(h) California law currently mandates appointment of an interpreter for all witnesses in civil cases, and for parties with hearing impairments. In addition, California statutes mandate the appointment of an interpreter in adjudicative proceedings before state agencies, boards, and commissions at no charge to the parties whenever a party or the party's witness does not proficiently speak or understand English. Other states by contrast provide both witnesses and parties with a right to a court appointed interpreter in all civil matters at no cost to the party.

SEC. 2. Section 755 of the Evidence Code is amended to read:

755. (a) ~~In any civil action or proceeding under Division 10 (commencing with Section 6200) of the Family Code, and in any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code) or for dissolution or nullity of marriage or legal separation of the parties in which a protective order has been granted or is being sought pursuant to Section 6221 of the Family Code, including, but not limited to, any family court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language,~~

1 and that party is present, an interpreter, as provided in this
 2 section, shall be present to interpret the proceedings in a
 3 language that the party understands, and to assist communication
 4 between the party and his or her attorney. Notwithstanding this
 5 requirement, a court may issue an ex parte order pursuant to
 6 Sections 2045 and 7710 of, and Article 1 (commencing with
 7 Section 6320) of Chapter 2 of Part 4 of Division 10 of the Family
 8 Code, without the presence of an interpreter. *Unless a party has*
 9 *notified the court that he or she has made arrangements for a*
 10 *private interpreter, the court shall provide the interpreter.* The
 11 interpreter ~~selected~~ shall be certified pursuant to Article 4
 12 (commencing with Section 68560) of Chapter 2 of Title 8 of the
 13 Government Code, ~~unless the court in its discretion appoints an~~
 14 ~~interpreter who is not certified~~ *except as provided in subdivision*
 15 *(c) of Section 68561 of the Government Code.*

16 (b) The fees of interpreters, *other than court employees,*
 17 utilized under this section shall be paid as provided in
 18 subdivision (b) of Section 68092 of the Government Code.
 19 However, the fees of an interpreter shall be waived for a party
 20 who needs an interpreter and appears in forma pauperis pursuant
 21 to Section 68511.3 of the Government Code. ~~The Judicial~~
 22 ~~Council shall amend subdivision (i) of California Rule of Court~~
 23 ~~985 and revise its forms accordingly by July 1, 1996.~~

24 (c) In any civil action in which an interpreter is required under
 25 this section, the court shall not commence proceedings until the
 26 appointed interpreter is present and situated near the party and
 27 his or her attorney. However, this section shall not prohibit the
 28 court from doing any of the following:

29 (1) Issuing an order when the necessity for the order
 30 outweighs the necessity for an interpreter.

31 (2) Extending the duration of a previously issued temporary
 32 order if an interpreter is not readily available.

33 ~~(3) Issuing a permanent order where a party who requires an~~
 34 ~~interpreter fails to make appropriate arrangements for an~~
 35 ~~interpreter after receiving proper notice of the hearing with~~
 36 ~~information about obtaining an interpreter.~~

37 (d) This section does not prohibit the presence of any other
 38 person to assist a party.

39 (e) A local public entity may, and the Judicial Council shall,
 40 apply to the appropriate state agency that receives federal funds

1 authorized pursuant to the federal Violence Against Women Act
2 (P.L. 103-322) for these federal funds or for funds from sources
3 other than the state to implement this section. ~~A local public~~
4 ~~entity and the Judicial Council shall comply with the~~
5 ~~requirements of this section only to the extent that any of these~~
6 ~~funds are made available.~~
7 (f) The Judicial Council shall draft rules and modify forms
8 necessary to implement this section, including those for the
9 petition for a temporary restraining order and related forms, to
10 inform both parties of their right to an interpreter pursuant to this
11 section.